

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO <i>ex rel.</i>)	
State Engineer, <i>et al.</i> ,)	69cv07941-MV/KK
)	
Plaintiffs,)	RIO CHAMA STREAM SYSTEM
)	
v.)	Section 3, Rio Cebolla
)	
RAMON ARAGON, <i>et al.</i> ,)	Subfile Nos. CHCB-001-0007,
)	CHCB-002-0001B,
Defendants.)	CHCB-002-0002C
)	CHCB-002-0009
_____)	

**RESPONSE TO STATE’S MOTION IN LIMINE TO EXCLUDE TESTIMONY
REGARDING IRRIGATION ON THE BLAS VALDEZ HOMESTEAD
IN RIO CHAMA, SECTION 3, RIO CEBOLLA SUBFILES**

COMES NOW the undersigned attorney, Ted J. Trujillo, on behalf of the Defendants, Charlie Chacon and Geralda M. Chacon and the Delfin O. and Frances S. Quintana Trust, and pursuant to the Court’s Order Setting Trial, (Doc. 11138), filed on August 30, 2016, Defendants respond to the State’s motion as follows.

I. Discussion

The State’s Motion in Limine to Exclude Testimony Regarding Irrigation on the Blas Valdez Homestead is misplaced and premature, raising evidentiary issues best resolved at trial as to the history and significance of irrigation within the Blas Valdez Homestead and adjoining properties. In support of its position the State raises the concern that the Defendants Chacon “*have never owned any part of the Blas Valdez homestead.*” [State’s Motion, page 1]. While the Chacon’s do not own any part of the Blas Valdez homestead in fee simple absolute, part of the Chacon’s pre-1907 irrigation

infrastructure begins in this homestead, off the natural creek, known as “El Rito de la Piedra”. Fee simple ownership of land is not the issue in this case. The issue is the history of the development of water infrastructure and the subsequent beneficial use of water made possible by the infrastructure. The State’s position entirely misses this point.

It appears that the State may not be aware that numerous community irrigation ditches, known as “acequias”, in northern New Mexico cross the property boundaries of the various irrigators, known as “parciantes”, beginning at the diversion structure off the natural water source to its very terminal point downstream where it returns back to the river. The location of the acequia throughout its course constitutes an easement for all the irrigators, so that in effect the acequia community are joint owners, individually and severally, of the easement upon which the acequia is located. This ownership includes the parciante’s right of access for construction, repair, maintenance and beneficial use of water from the acequia for his respective property, just as it exists across all the privately owned properties.

The reference of the Blas Valdez homestead by Defendants is evidence of this traditional “community” acequia arrangement, beginning with its founding pre-1907 and its full extension into property owned by Defendants in fee simple and irrigated during the pre-1907 time period. The fact that Chacon does not own any of the original Blas Valdez homestead is immaterial to its claim of irrigated acreage in the contiguous Juan Desiderio Valdez Homestead, coming through the “Sanchez” Ditch, that also was irrigated pre-1907 and which began in the Blas Valdez Homestead, entered into the Aguilar Homestead and then into the Juan Desiderio Valdez Homestead.

A casual examination of the State's exhibits where homestead boundaries are shown illustrates this traditional water use arrangement across the boundaries of the contiguous homestead parcels. (See State Exhibits 41, 42, 43, 44, 45, 46, 47 and 48 showing the various natural streams and acequias superimposed on the various Homestead properties.) Although the Defendants do not agree with all the depictions of the courses of the natural streams and acequias as shown in the State's exhibits, Defendants seek to describe where and how its use of water, as diverted from the natural stream, known as "El Rito de la Piedra", was developed from its inception and put into beneficial use on the various adjoining properties.

WHEREFORE, the undersigned Defendants' counsel respectfully requests that the State's Motion in Limine be denied by this Court and for such other relief deemed proper in this matter.

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Certificate of Service

I certify that on November 25, 2016, I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list to be served the Notice of Electronic filing.

/s/ Ted J. Trujillo
Ted J. Trujillo